

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

HERIBERTO VALIENTE, individually  
and on behalf of all others similarly  
situated,

Plaintiff,

v.

PUBLIX SUPER MARKETS, INC.,

Defendant.

CASE NO. 1:22-cv-22930-RNS

**DEFENDANT’S SECOND NOTICE OF SUPPLEMENTAL  
AUTHORITY IN SUPPORT OF MOTION TO DISMISS  
FIRST AMENDED COMPLAINT [ECF NO. 11]**

Pursuant to Local Rule 7.8, Defendant Publix Super Markets, Inc. brings to the Court’s attention the following supplemental authority:

- *Davis v. PUR Co. (USA)*, No. 22-CV-6430L, 2023 WL 3024407 (W.D.N.Y. April 20, 2023).

Davis—represented by the same counsel representing Plaintiff here—brought a class action alleging deceptive practices where a product’s packaging stated “peppermint” but it contained only a *de-minimis* amount of peppermint. Davis alleged claims for a violation of the state consumer-protection statute, breach of warranties, negligent misrepresentation, fraud, and unjust enrichment. The court dismissed the case “with prejudice” because “a reasonable consumer”:

would not be misled by the Product label’s use of the word “peppermint,” into believing that the Product’s flavor was derived solely from peppermint components such as peppermint oil or

peppermint extract....[A]ny consumer who was confused about whether the front label was designating a flavor, an ingredient, or both, could simply read the Product's listed ingredients, which do not include peppermint oil or peppermint extract.

*Id.* at \*4.

*Davis* is relevant to all arguments in Publix's Motion To Dismiss Plaintiff's First Amended Class Action Complaint [ECF No. 11]. Plaintiff makes nearly-identical claims about this "honey-lemon" product and Florida law uses the same reasonable person standard.

Dated: April 26, 2023

Respectfully submitted,

/s/ Daniel B. Rogers

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